

BEFORE THE ARBITRATOR

In the Matter of the Stipulation of
WAUWATOSA PEACE OFFICERS ASSOCIATION
and
CITY OF WAUWATOSA
For Final and Binding Arbitration Involving
Law Enforcement Personnel in the Employ of
CITY OF WAUWATOSA

Case 115
No. 57240
MIA-2244

Decision No. 29936-A

Arbitrator James W. Engmann

Appearances:

Ms. Laurie A. Eggert, Eggert Law Office, S.C., Attorneys at Law, 1840 N. Farwell Avenue, Suite 303, Milwaukee, WI 53202, appearing on behalf of the Wauwatosa Peace Officers Association.

Mr. Jonathan T. Swain, Lindner & Marsack, S.C., Attorneys at Law, 411 East Wisconsin Avenue, Milwaukee, WI 53202, appearing of behalf of the City of Wauwatosa.

ARBITRATION AWARD

The City of Wauwatosa (hereinafter City or Municipal Employer) and the Wauwatosa Peace Officers Association (hereinafter Association or Labor Organization) filed a stipulation on January 25, 1999, with the Wisconsin Employment Relations Commission, requesting the Commission to initiate compulsory final and binding arbitration pursuant to Sec. 111.77(3) of the Municipal Employment Relations Act for the purpose of resolving an impasse arising in collective bargaining between them on matters affecting the wages, hours and conditions of employment of law enforcement personnel in the employ of said Employer. An informal investigation was conducted on February 24, 1999, by a member of the Commission's staff, which investigation reflected that the parties were at impasse. The Investigator closed the investigation on that basis and transmitted the parties' final offers to the Commission on June 30, 2000. The Commission certified that the conditions precedent to the initiation of compulsory final and binding arbitration have been met and on July 7, 2000, ordered that compulsory final and binding interest arbitration be initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the Association and the Employer. In an Order dated September 1, 2000, the Commission appointed the undersigned

as the impartial arbitrator to issue a final and binding award in this matter pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act.

Hearing in this matter was conducted on November 29, 2000, in Wauwatosa, Wisconsin, at which time the parties were afforded the opportunity to present evidence and to make arguments as they wished. The hearing was transcribed, a copy of which was received on or about December 6, 2000.

The parties submitted briefs and reply briefs, the last of which was received February 5, 2001. Full consideration has been given to the evidence and arguments of the parties in reaching this decision.

1. FINAL OFFERS

1. The City's Final Offer is as follows:

2. Appendix A: Pay Proposal (three-year term)

2.75% increase effective 1/1/99

2.75% increase effective 1/1/00

2.75% increase effective 1/1/01

2. Article XIV – Insurance, Section 2 Health Insurance Prescription Drug Co-pay

Effective the first of the month following mutual ratification or receipt of an arbitrator's decision, increase the co-payment for generic drugs under the drug card program to \$7 and the co-payment for brand name drugs under the drug card program to \$10, if the same occurs within the year 2000. Effective January 2, 2001, or the first of the month following mutual ratification or receipt of an arbitrator's decision, increase the co-payment for generic drugs under the drug card program to \$8 and the co-payment for brand name drugs under the drug card program to \$13.

3. Article VIII – Pay Policy, Section 3

Add \$60 to certification pay annually, effective upon the commencement of the increase in prescription drug co-payment. The \$60 would be pro-rated for the first effective year based upon the implementation date of the increase in prescription drug co-payment

2. The Association's Final Offer is as follows:

1. Wages

Effective 1/1/1999, 2.75% increase

Effective 1/1/2000, 3.0% increase

Effective 1/1/2001, 3.15% increase

2. Prescription co-pay

Effective at execution of contract, employee's co-pay for prescription drugs will be \$7 generic/\$10 brand name.

Effective 1/1/2001, increase the employee's co-pay for prescription drugs to \$8 generic/\$13 brand name.

2. STATUTORY CRITERIA: Section 111.77 of the Municipal Employment Relations Act reads in part:

(6) In reaching a decision the arbitrator shall give weight to the following factors:

(7) The lawful authority of the employer.

(2) Stipulation of the parties.

(3) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

1. In public employment in comparable communities.

2. In private employment in comparable communities.

(5) The average consumer prices for good and services,

commonly known as the cost-of-living.

- (6) The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

3. POSITIONS OF THE PARTIES

Wauwatosa Peace Officers Association on Brief

The Association argues that its demand is reasonable when compared to the percentage increases in the external comparables; that the Association's list of comparable cities provides a more appropriate basis for comparison; that the Association relies upon each of the suburban Milwaukee police departments; that these departments compete with each other for workers and have common costs of living; that the City excludes any suburb with a population of less than 20,000; that there is nothing in the record to provide population as the sole basis for excluding other suburban jurisdictions; that the City overlooks other factors which affect the comparability of the jurisdictions, such as geographic proximity, size of the police force, ratio of police officers to city population, and the amounts and types of crime; that the Association's use of all of the suburban jurisdictions is a better choice; that it considers a wide variety of bases for comparability, rather than the simple but arbitrary test of population; that it recognizes that police officers may live in any of these communities and yet work in others; that the larger pool of jurisdictions avoids the risk that certain jurisdictions have been hand-picked to achieve a result; that the larger pool is particularly important where only four of the City's comparables have settled for 2001; that using the Association's larger pool of all the suburban comparables results in 14 settlements which provides a better basis for evaluating the 2001 wage proposals of the parties; and that the City and the Association do not have a history of reliance on a particular set of comparables

The Association also argues that Wauwatosa has slid from the top of the wage heap to near the bottom; that Wauwatosa police officers have historically been paid some of the highest wages in the suburban Milwaukee area; that the slide in ranking is mirrored by the slide in the amount above the average base wage paid among the suburban comparables; that the City's proposals would continue the slide among the City's comparables even further; that the percentage increase in the Association's offer is reasonable when compared to the percentage increases among the comparables; that the Association offer is more reasonable since it is closest to the average settlements among the comparables, even though it is still substantially below those averages; and that Wauwatosa's declining rank in total compensation mirrors its slippage in wages.

In addition, the Association argues that changes in the Consumer Price Index favors the Association's wage offer; that under both the City and Association wage offers of 2.75% in 1999, the police will lose to inflation; that losses will continue in 2000 under either offer and under either measure of the CPI-U since inflation has outpaced both the City's 2.75% offer and the Association's 3.0% offer for 2000; and that, because the rate of inflation in 1999 and 2000 exceeds both the City and Association wage offers, the CPI factor favors the Association offer since it is closest to, although under, the rate of inflation during those years.

In regard to internal comparables, the Association argues that these should not be given primary weight in this proceeding; that Section 111.77(6)(d) of MERA specifically identifies external comparables as a factor which should be given weight; that while subsection (h) clearly provides the arbitrator with authority to consider internal comparables as one of the other factors which arbitrators consider in disputes, the legislature placed greater weight on the external comparables by specifically identifying them in subsection (d); that arbitrators have frequently stated that external comparables have greater significance than internal comparables; that external comparables present a particularly good measure of cost of living increases in periods of low inflation; that the case for reliance of external comparables is even stronger where the internal settlement pattern would result in slippage in the rankings; that Wauwatosa's other units are well-paid relative to their external comparables, while the police are poorly paid relative to their comparables; that because recruitment has become more difficult, Wauwatosa needs to stay comparable to wage increases offered by other police departments; that primary reliance on internal comparables is particularly inappropriate where the number of applicants for the position of police officer has decreased recently; that the uniqueness of policing requires primary reliance on external comparables; that police should not be forced to accept a sub-standard wage increase where they have already acceded to the City's request for a give-back on drug co-pays; and that the increases, both actual and anticipated, in health costs

do not provide a basis for a substandard wage increase for police

In conclusion, the Association argues that its offer is more reasonable than the City's; that the Association's wage offers are substantially below the average wage increases of the three years of the contract and the City's offers are even lower; that each of the Association's proposed increases is less than the CPI increases in 1999 and 2000; that Wauwatosa's ranking among the external comparables has been sliding downhill as the City followed its pattern of internal comparables; that while other jurisdictions have been paying higher wage increases to their police officers to remain competitive, Wauwatosa has paid its police the same wage increases that it paid to its non-police employees; that the City has tried for too much in this contract; that not only does it offer wage increase that are below average, and which continue Wauwatosa's downward slide among the external comparables, the City adds a significant giveback in the form of a drug co-pay; that most employers try to sell a giveback by offering better than average improvements in other areas of the contract, such as wages; that Wauwatosa imposed a substantial drug co-pay cost increase, offsetting it with a small certification increase, and then offered a significantly lower than average wage increase; that the end result is that the City offer is substandard in both the wage offer and in the *quid pro quo* it offers for the drug co-pay; that the City's offers are significantly lower than the average among the external comparables; that the City's offer will drag police wages down from \$201 above the average wage in 1998, the last year of the expired contract, to a low of \$690 below the average in 2001; that such a huge drop in one contract is unreasonable and unwarranted; and that adding the drug co-pay giveback turns an unreasonable offer into an abysmal one which must be rejected

City of Wauwatosa on Brief

The City argues that the evidence overwhelmingly supports the conclusion that the City is a leader in overall wage and fringe benefit compensation levels among comparable municipalities in the Milwaukee metropolitan area; that a review of the Association's supporting data fails to reveal any basis for the additional wage increases which the Association is seeking; that the City's proposal is consistent with its own internal comparables, a factor which should receive significant weight by the arbitrator; that as a result the Association must show compelling circumstances to warrant an exception to the City's internal pattern of settlement; that under the City's offer, Wauwatosa police officers will continue to be among the area's highest compensated; that the City of Wauwatosa police officers are currently the recipients of the premier health insurance program in the Milwaukee metropolitan area; that the most pressing issue in collective bargaining these days is often, if not always, health insurance; that while the parties agreed to minor changes in the prescription do-pay, the City elected not to renegotiate the overall health insurance plan; that, instead, the

City sought only that the police Association accept the same wage settlement as the other City collective bargaining units; that the Association bears the burden in this case of demonstrating compelling circumstances which support breaking the pattern established with these other bargaining units; that, in fact, the Association can demonstrate no basis for its proposed departure from the internal comparables; and that the City has succeeded in proving that it provides the best health insurance plan in the area, a generous retiree health insurance program, certification pay, uniform allowance and longevity pay which, when taken together, make Wauwatosa one of the leaders in overall compensation in the Milwaukee metropolitan area.

In regard to internal comparables, the City agrees with a previous arbitrator's analysis regarding the weight to be afforded internal settlements; that, while not conclusive, internal settlements should be given great weight; that this supports the City's offer in the present matter; that the City negotiates with four units in addition to the Police unit; that in reaching agreement for contract years 1999, 2000 and 2001, each of the other unions agreed to a 2.75% across the board increase in each year of their contract; that all four of the other unions agreed to the prescription drug co-pay changes which the City has proposed and the Police Association has agreed to; that the City passed on the value of that change, approximately \$60, in various ways to each of the other unions; that it is only the Police Association that is seeking to be an exception to the 2.75% per year pattern; that this pattern is to be given great weight by this arbitrator; that it is incumbent upon the Police Association to demonstrate a specific reason why an exception from the pattern should be made; that the City showed that for the last 15 years there has been near uniformity in the settlements between the various unions and the City; that each union brings its own particular interests and point of view to the bargaining process; that each of the bargaining units expects that issues unique to them will be dealt with fairly, forthrightly and with due consideration to the interests of that unit; that, at the same time, each union believes that it should not be disadvantaged in relation to any other union; that it is in the area of economics that employers are particularly concerned about the risks associated with disparate economic settlements; that in the area of across the board wage increases and basic fringe benefits, a city would find itself faced with total chaos if it took lightly the consequence of differing economic positions in bargaining; that to do so would breach a sense of fair dealing that is essential to any long term bargaining relationship; and that with each of the other bargaining units agreeing to the 2.75% and an absence of compelling circumstances which requires the Arbitrator to depart from this pattern, the pattern of internal settlement established through bargaining with four other collective bargaining units should be maintained.

In regard to external comparables, the City disagrees with the Association that communities with populations under 5000 people are comparable with Wauwatosa, instead arguing that suburban communities with populations of 20,000 or more are

the most comparable communities and should be the basis for the comparables listed; that including Wauwatosa in the overall average for each of the City's comparables, the City's base rate falls at approximately the average level for base wages; that it is inappropriate to focus solely on base wage; that the statutes require looking at salary add-ons, such as longevity pay, uniform and gun allowances, and certification pay; that considered along with the base wage, the total of wage and salary add-ons represents the best measure of an employee's disposable income; that the City ranks high in each of these add-ons; that for the Association to ignore total compensation and attempt to focus solely on base compensation is unfair to the City and destructive of the bargaining process; that Wauwatosa is the only community with certification pay; that it has some of the highest longevity pay; and that a review of the base wage alone cannot be the basis for an agreement or an award; that only total salary compensation, along with other applicable fringe benefits, along with other statutory factors, can be the basis of an award.

In conclusion, the City argues that based upon the supporting data contained in the City's exhibits, it is clear that the Association has failed to meet its burden to show that its offer is more reasonable than the City's offer; that, by contrast, the City has met its burden of showing that its offer is the most reasonable; that the City's offer is in conformity with its internal pattern; that this factor should be given great weight by the arbitrator, although the City concedes it alone is not controlling; that, in turn, the Association must show that there are compelling circumstances which warrant a break in the pattern; that the Association has failed in meeting its burden; that the City has demonstrated that its base wage rates are essentially at the statistical average for comparable communities; that, in addition, when considering other salary add-ons, such as certification pay, longevity pay and uniform allowance, the City of Wauwatosa exceeds the average for comparable communities; that the City has gone to great lengths to explain the contexts of health insurance and retirees health coverage within its overall compensation scheme; that police officers enjoy the finest health insurance program available among the comparable communities; that, further, this plan is fully paid for by the City; that, in contrast, a growing number of comparable communities now require monthly employee payments and managed care; that this results in fewer choices available to employees; and that, in addition to these factors, the City demonstrated that it has the best retiree health plan available within its group of comparable communities which further supports the City's position that its final offer should be accepted.

Therefore, the City asserts, taken as a whole, only one conclusion can be reached; that the City of Wauwatosa's final offer is the most reasonable in light of all of the applicable factors; that there are no compelling circumstances which the Association can point to which would suggest that a departure from the internal comparables is appropriate; and that, for these reasons, the City respectfully requests that the

arbitrator select the City's final offer in this matter.

Association on Reply Brief

The Association argues that the City offers no explanation as to why "proportionately smaller" departments are not sufficiently comparable to warrant review; that the City argues out of both sides of its mouth when it comes to the importance of internal vs. external comparables; that despite its commitment to the primacy of internal comparables in this proceeding, the City has taken the opposite position in its recent arbitration with the dispatcher; that forcing the police to take the wage package which was negotiated by other unions undermines the collective bargaining process; that while the City argues that settlements outside of an internal pattern are destructive to the bargaining process system and discourages voluntary settlement, the flip side of the argument should also be noted; that when a city comes to the bargaining table and tells a union that they will settle for 2.75% in each of three years and will settle for a drug co-pay giveback and \$60 because that is what the other city unions have taken, it is hard to claim that the parties have engaged in collective bargaining; that the purpose of bargaining between the City and the Association is to establish a fair wage and benefit package for Wauwatosa police, not merely to impose what is fair for the other bargaining units; that if it were that simple, there would be no need for all those messy bargaining sessions; that the City's exhibits showing total compensation after employee health insurance contributions are deducted are inaccurate; and that the record does not support the City's claim that Wauwatosa's total compensation ranking has improved in 1999 and 2000.

In addition, the Association argues that the City's arguments regarding health care costs and benefits fail; that the City's arguments would be more appropriate if the City was arguing for contractual changes in health insurance cost-sharing or benefit levels; that there are none at issue; that the Association has agreed to the City's health insurance changes of increasing the prescription drug co-pay provisions; that health care costs have increased for each of the comparables; that the City has not made improvements in health care benefits which could be viewed as a *quid pro quo* for substandard wage increases; that the record does not indicate that employees in the comparable jurisdictions have significantly increased their contribution to health care as a *quid pro quo* for their significantly better wage increase; and that what the record does show is that Wauwatosa wages and total compensation have been sliding relative to its comparables as increased health care costs have affected each of the comparable jurisdictions.

Finally, the Association argues that the City's workload exhibits do not provide any meaningful information concerning workload or working conditions; that they do not provide a justification for offering Wauwatosa police officers a smaller wage increase

than received by their peers; that the City uses the wrong time period for increases in the cost of living; that the arbitrator should consider changes in the cost of living since the last wage increase, or the two years of the proposed contract which have already passed; and that, therefore, the Association respectfully urges the Arbitrator to award its offer.

City on Reply Brief

The City argues that the Association's arguments in support of its final offer failed to demonstrate that it is the most reasonable offer under the statutory criteria; that Wauwatosa is not comparable to every other community in the Milwaukee area; that the Association's focus solely on base wage ignores the relevance of salary add-ons fringe benefits; that this is destructive of the collective bargaining process; that the Association's argument that alleged recruitment difficulties support the Association's proposal is unsupported by the record; that the Association's argument that internal comparables should not be given primary weight in this proceeding should be rejected; that the City agrees that other things being equal, the so-called "intra-industry comparison" is the comparison most commonly cited; that, however, the Association is choosing to ignore well established precedent in Wisconsin; that arbitratral precedent clearly supports that proposition that internal settlements are to be given primacy unless it is determined that to do so would render an injustice such that the disparity between the average wage paid within the industry and an employer's proposed wage must be significant enough to compel altering the internal pattern; that Wauwatosa's bases wage plus certification pay is at least at the average level; that, therefore, there is insufficient justification for the Arbitrator to break the internal pattern of settlement under all of the factors considered; and that the City respectfully requests that the arbitrator select the City's offer in this matter as the most reasonable.

4. STATUTORY ANALYSIS

Neither party argues here about the lawful authority of the employer, the interests and welfare of the public, or the financial ability of the unit of government to meet the cost of either proposal. The parties do not have any stipulations, though their final offers do share some parts. The parties agree on the term of the contract: 1999-2001. The parties also agree on the salary increase in 1999: 2.75%. The parties also agree to change the drug co-pay to \$8 for generic drugs and \$13 for brand name drugs.

The parties disagree on the salary increase in the last two years of the contract, with the City offering a 2.75% increase each year and the Association seeking a 3.00% in

2000 and a 3.15% increase in 2001. The City offer includes implementing the drug co-pay the on the first of the month following the arbitrator's decision in this matter, while the Association's offer implements said co-pay effective January 1, 2001. The City offer increases the certification pay by \$60 annually, pro-rated based upon the implementation of the increase in the prescription drug co-pay, while the Association makes no change in the certification pay.

Section 111.77(6)(d) Comparison of the wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally.

1. External Comparables.

The City argues a list of eleven comparables, all cities with populations over 20,000. They are Brookfield, Franklin, Greenfield, Menomonee Falls, Mequon, Muskego, New Berlin, Oak Creek, South Milwaukee, Waukesha and West Allis. The Association argues for all twenty-seven of the suburbs of Milwaukee to be included as comparables. They are Bayside, Brookfield, Brown Deer, Butler, Cudahy, Elm Grove, Fox Point, Franklin, Germantown, Glendale, Grafton, Greendale, Greenfield, Hales Corners, Menomonee Falls, Mequon, Muskego, New Berlin, Oak Creek, River Hills, Shorewood, South Milwaukee, St. Francis, Waukesha, West Allis, West Milwaukee and Whitefish Bay.

Both parties' positions on this issue, as outlined in the Position of the Parties stated above, are not particularly defensible. The Association's arguments against the choice of comparables made by the City (i.e., that the City did not look at geographic proximity, size of police force, etc.) are also arguments against its own position. The Association does not distinguish at all between the 28 bargaining units, some of which are clearly and considerably less comparable than others. The City begins at the right place, a list of eight comparables used before with the City in a previous arbitration, but then adds three more comparables based only upon size of the municipality involved. The problem here is that the City proposed the eight comparables in the previous arbitration, a position agreed to by the arbitrator, and offers no concrete reason why to deviate from that list here.

In the previous arbitration, Arbitrator Grenig determined that the appropriate external comparables were Brookfield, Greenfield, Menomonee Falls, New Berlin, Oak Creek, South Milwaukee, Waukesha and West Allis.¹ Although the City had proposed that

¹*City of Wauwatosa (Dispatchers)*, Decision No. 29479-A (Grenig, 4/99) at p. 6.

list to the arbitrator, Arbitrator Grenig explained his choice by saying these comparables are geographically proximate to the City of Wauwatosa and have paid fire departments. While the issue of paid fire departments is not present in this matter, neither party offered any convincing evidence on why a different set of comparables should be used here. Therefore, I will adopt those communities as the external comparables for this matter.²

In terms of salary position for Top Patrol Officer, the Association has presented convincing evidence of a continual decline in standing for the past 15 years. For the nine years of 1985 through 1993, Wauwatosa was second of the nine comparables. For the three years of 1994 through 1996, Wauwatosa was third. In 1997, Wauwatosa dropped to fifth, and to sixth in 1998.

This is a drastic drop in standing, which only worsens in 1999, the year in which the parties have agreed to a 2.75% increase, for as a result of that raise, Wauwatosa drops to ninth out of nine comparables, using the Resident rate for West Allis. And irrespective of which final offer is chosen for 2000, Wauwatosa remains number nine out of nine comparables, though the Association's offer is obviously closer to number eight than the City's offer.

²If there was no history here, size of both the municipality and the police force and proximity of the municipality to the City of Wauwatosa would be the qualities I would most emphasize in picking comparables in this case. Such a group would include Brookfield, Greenfield, Menomonee Falls, New Berlin, Waukesha and West Allis, all of which have populations over 30,000 and police forces with over 50 officers. But the set of comparables used before works to resolve this matter as well.

Among the comparables, the average settlement is 3.3% in 1999. The parties' increase of 2.75% in 1999 is significantly below that. In 2000, the settlements range from 2.9% to 3.83%, with an average of 3.17%. The Association's proposal of 3.0% falls right on the median of the comparables, while the City's offer is substantially below the average and is lower than even the lowest settlement. For 2001, there are not enough settlements to make a statistically valid average or ranking.³

When the number of hours of work are taken into consideration, Wauwatosa's rank increases to seventh of nine in both 1999 and 2000, regardless of which offer is accepted.

1. Internal Comparables

The City negotiates with four other bargaining units: OPEIU Local 35 (office employees); AFSCME District Council 48, Local 305 (DPW employees); IBEW Local 494 (dispatchers); and Professional Firefighters Association Local 1923.

The City has shown a strong, consistent and lengthy internal pattern of comparable settlements. For thirteen years, from 1986 through 1998, all of the City's bargaining units agreed to the same percentage settlement,⁴ except for two years in which one

³Of the comparables, only West Allis at 2.00% and Greenfield at 3.00% have settled. One of the City's additional comparables, Franklin, has settled at 2.00% plus 2.00% for a 3.00% cost and a 4.00% lift. Including all of the Association's comparables, there are nine more settlements which, when combined with the three mentioned above, have an average cost of 3.25% and an average lift of 3.47%.

⁴OPEIU Local 35 did not begin bargaining until 1994, but for the five years from 1994 through 1998, it too settled at the same percentage increase.

bargaining unit took a lower wage settlement for an increased benefit.⁵ For the three years of 1999-2001, all of the City's bargaining units, except for the Association, agreed to the same offer from the City that is offered to the Association here.⁶

Section 111.77(6)(e) The average consumer prices for good and services, commonly known as the cost-of-living.

The consumer price index through October 2000 is above what either party is seeking in this arbitration for the time period involved, regardless of which index is used.

Section 111.77(6)(f) The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

⁵Professional Firefighters Association Local 1923 took 0.5% less in 1989 and 0.25% less in 1990 to receive an increase in holiday pay.

⁶Specifically, the pay raise was 2.75% for each of the three years and the increase in drug co-pay was the same, though the way in which the City paid its \$60 *quid pro quo* differed between the units, a fact that is not of concern here.

Wauwatosa provides a yearly Certification Pay of \$450, which increases to \$510 in 2001 under the City's proposal. This benefit is unique among the comparables. When added to the 1999 Top Patrol Officer rate, Wauwatosa moves to sixth among the nine comparables. In 2000, the City's rank stays at sixth.⁷

In terms of vacation time, holidays, longevity pay, uniform allowance, and retiree health insurance, Wauwatosa is at or near the top of the external comparables. A huge difference is the insurance package. It appears to be the best among the comparables both in terms of coverage and choices, and it is fully funded by the City.

So in terms of its economic add-on package and fringe benefits, Wauwatosa is a leader, and when these items are combined with salary, they raise the Association's ranking to five out of nine comparables.

5. DISCUSSION

This is a classic battle between internal and external comparables with the added dispute between cost of living increase and total economic package. On the Association side stands a strong external comparable settlement pattern⁸ and the consumer price index⁹. On the City's side stands a complete (but for the Association) and a long-term internal settlement pattern and a strong total economic add-on and fringe benefit package.

In regard to the City's internal settlement pattern, Arbitrator Flaten wrote in a case involving the City and its Firefighters unit as follows:

⁷This is true for both final offers. While the Association's offer is higher in salary, the City's offer increases the Certification Pay. Both final numbers end up at number six.

⁸For 1999 and 2000; there are not enough settlements to make a statistically valid average or ranking for 2001.

⁹1999 through October 2000.

It is important that municipalities, especially the size of the municipality at hand, should attempt to have consistency and equity in the treatment of its employees. Hard feelings are avoided when all city employees are treated alike. Deviation from an historically established pattern can be disruptive and have a negative impact on employee moral. *Douglas County Sheriff's Department*, Dec. No. 27594 (Flaten, 8/93).¹⁰

And while Arbitrator Flaten is correct as a general rule, this case involved a bargaining unit which had tentatively agreed to changes in the health insurance plan, changes agreed to by the other bargaining units, including the Association, after which the bargaining unit failed to ratify the tentative agreement. The parties found themselves in arbitration with the City arguing for the changes already agreed to by the other bargaining units and the Firefighter unit taking a different position.

Administering any health plan is a difficult matter, but to have different health plans for different employee groups could be an administrative nightmare for a self-funded program. In such a situation, the employer's need for consistency, together with the agreement of all other bargaining units, is a strong indication of what the outcome should be. The Association might be very aware of this, for it has agreed to the health insurance changes requested by the City and agreed to by the other bargaining units.¹¹

In the arbitration between the City and its Dispatcher unit, Arbitrator Grenig wrote:

One of the most important aids in determining which offer is more reasonable is an analysis of the compensation paid similar employees by other, comparable employers. Arbitrators have also given great weight to settlements between an employer and its other employees. See, e.g., *Rock County (Deputy Sheriffs' Ass'n)*, Dec. No. 20600-A (Grenig 1984). While arbitral authority establishes the principle that internal settlements are to be given "great weight," such internal settlements are not conclusive. It is still necessary to examine other criteria, including

¹⁰*City of Wauwatosa (Firefighters)*, City Exhibit 28-a (Flaten, 8/94), at p. 10.

¹¹Though it has rejected the *quid pro quo* offered by the City, instead seeking a greater increase in salary.

external comparables.¹²

This case involved the Dispatcher unit seeking an increase in Holiday hours. Though cited by the City in this matter to support a standard for analyzing internal comparables, the City argued in the Dispatcher case that external comparables should prevail. Indeed, the arbitrator found that the Dispatchers had less holiday hours than the average of the other internal comparables, but that the unit had the most holiday hours of its external comparables, the same comparables being used in this matter. The Arbitrator found for the City.

But while this arbitrator has no argument with giving "great weight" to internal comparables, such weight must be balanced with other criteria, especially external comparables. Placing too little weight on internal comparables can discourage voluntary settlements, as argued by the City in this matter, but locking units into internal comparables can discourage collective bargaining, as argued by the Association in this matter.

Here we have the added internal comparable incentive in that the pattern of settlements have been consistent over a long period of time. But much of the impact of this is loss as the Association showed conclusively that the salary for its most populated position has plunged from second in the comparables for many years to as late as 1993 to ninth in 1999. Even if the more expensive offer of the Association is selected for 2000, the unit will find itself ninth out of nine comparables. In addition, the Association showed that, at least in regard to the firefighters and dispatchers, these units are high among their comparables in regard to salary.

Just considering cost add-ons in the economic package, Wauwatosa ranks fifth of nine, right in the middle, average, not screaming it is so low it must be raised, nor so high that it can not be raised. In this case, the health insurance benefit is difficult to analyze, especially since it appears to be so unique among the comparables and the comparables vary by the amount contributed by the employes, depending on the plan they have chosen. The record is clear that the cost of the City's plan is high, for which the employes receive a splendid benefit. But the record also indicates that the parties have considered some cost saving alternatives, but other than the drug co-pay increase, they did not appear in the final offers.

Other numbers that are high, in comparison to the salary offer, are the external settlements and the consumer price index. The average increase in salary was 3.30%

¹²*City of Wauwatosa (Dispatchers)*, Decision No. 29479-A (Grenig, 4/99) at p. 8.

in 1999 and 3.17% in 2000 among the comparables. And these are the numbers that arbitrators traditionally rely most heavily upon. As Arbitrator Petrie has written:

[I]t is widely recognized in Wisconsin and elsewhere that the comparison criterion [of external comparables] is normally the most important of the various criteria, and that so-called intraindustry comparisons are generally regarded as the most important and the most persuasive of the possible comparisons.¹³

The Association's offer, though higher than the City's in 2000 and 2001, is still 0.55% lower than the comparable average in 1999 and 0.17% lower in 2000. And part of this is off-set by the Association taking the *quid pro quo* for the change in drug co-pay in salary instead of in Certification Pay, as the City proposes. In addition, the Association's offer lags behind the consumer price index, at least through October 2000, which is the latest data in the record, but not as far behind as the City's offer.

6. CONCLUSION

So while the City can point to an internal settlement pattern of 2.75% for all three years, a long term settlement pattern among all its bargaining units, an economic benefit package that puts the City in the middle of the pack, and a premium insurance package, the Association can point to a internal settlement pattern which has caused it to plunge in salary from second place to ninth place among its nine comparables since 1993, an external settlement pattern in 1999 and 2000 which still exceeds what it is seeking in this award, and a consumer price index which also exceeds its salary request. To be sure, the Association did not get greedy in its request – its salary request still keeps it last among the comparable but slows down a pattern which would have seen its salary continue to erode in relation to its comparable.

The parties made many other arguments in strong defenses of their positions, all of which have been carefully reviewed and analyzed, and all have been found wanting for one reason or another. After carefully reviewing the entire record in this matter, for the reasons stated above, this arbitrator issues the following

AWARD

¹³*Winnebago County Sheriff's Department*, Decision No. 27087-A (Petrie, 8/92) at p. 20.

1. That the final offer of the Association is the most reasonable of the offers before this arbitrator.
2. That said final offer shall be included in the parties 1999-2001 collective bargaining agreement.

Dated at Madison, Wisconsin, this 30th day of March, 2000 [2001].

By

James W. Engmann, Arbitrator

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